



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 9, 1991

Mr. Robert E. Talton, Esq.
308 So. Shaver
Pasadena, Texas 77506-2017

OR91-616

Dear Mr. Talton:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. This office originally issued OR91-528 (1991) in response to your initial request.. That ruling is now withdrawn and replaced by this open records ruling.

The City of South Houston Police Department (the department) received an open records request for an arrestee's "police report" "documented on said date of August 24, 1991." You seek to withhold the requested information pursuant to sections 3(a)(3) and 3(a)(8) of the Open Records Act.

The arrestee in question died in police custody the same day of his arrest. Because it is not clear to this office whether the requestor seeks the original offense report which pertains to the arrest of the decedent, the offense report pertaining to the death of the decedent, or the "custodial death report" that the department is required to file with the Office of the Attorney General pursuant to article 49.18(b) of the Code of Criminal Procedure, we will address the public nature of each of these three documents.

Because you have informed this office that the department has retained a copy of the custodial death report it filed with the attorney general, Open Records Decision No. 521 (1989) (copy enclosed) governs your request in part. Article 49.18(b) of the Code of Criminal Procedure requires that law enforcement agencies complete custodial death reports and file those reports with the attorney general. Part I of the custodial death report consists of public information that must be

released; the department must withhold all remaining portions of the custodial death report, *i.e.* Parts II through V, which are deemed privileged under article 49.18(b). Open Records Decision No. 521 at 5.

Article 49.18(b) of the Code of Criminal Procedure does not, however, close to the public all information held by a local law enforcement agency simply because the information is also included in or attached to custodial death reports submitted to the attorney general; if a governmental body receives a request for information otherwise generated or maintained by the agency in the regular course of its business, those documents may be withheld only if one of the Open Record Act's exceptions or another specific law protects them. *Id.* at 7. Accordingly, because you advise that the department maintains the original offense reports pertaining to both the arrest and death of the decedent as records generated during the department's regular course of business, the department may withhold these records only if one of the exceptions listed in section 3(a) of the Open Records Act apply.


You have not demonstrated that either offense report comes under the protection of section 3(a)(3) or 3(a)(8). To secure the protection of section 3(a)(3), a governmental body must first demonstrate that a judicial or quasi-judicial proceeding is pending or reasonably anticipated. Open Records Decision Nos. 452 (1986); 360 (1983). The mere chance of litigation will not trigger the 3(a)(3) exception. Open Records Decision Nos. 331, 328 (1982). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* You have not shown that either offense report meets this initial test. Consequently, the department may not withhold these documents pursuant to section 3(a)(3).

Whether section 3(a)(8) applies to particular records depends on whether their release would "unduly interfere" with law enforcement or prosecution. Open Records Decision Nos. 434 (1986); 287 (1981). You have made no showing that either the investigation of the theft or the custodial death are still pending, nor have you otherwise explained why this information should not be released. Accordingly, we conclude that section 3(a)(8) does not except from required public disclosure either of the reports; the department must therefore release these records.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with

a published open records decision. If you have questions about this ruling, please refer to OR91-616.

Yours very truly,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/RWP/lcd

Ref.: ID# 14167
ID# 13768
OR91-528 (withdrawn)

Enclosures: Open Records Decision No. 521

cc: Ann Bradley
1207 New Brunswick
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(w/o enclosures)